

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**Building Code Appeals Board
Docket # 10-870**

Frank Pellino,)	
Appellant)	
)	
v.)	
)	
Town of Ipswich,)	
Appellee)	
)	

BOARD’S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board (“Board”) on the Appellant’s appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board grant a variance from 7th edition 780 CMR 3400.4.1(2) for the property at 10-14 Central Street, Ipswich, MA 01938. In accordance with G.L. c. 30A, §§ 10 and 11; G.L c. 143, §100; 801 CMR 1.02 *et. seq*; and 780 CMR 122.3.4, the Board convened a public hearing on April 20, 2010 where all interested parties were provided with an opportunity to testify and present evidence to the Board. Frank Pellino, Karen Pellino, and Eric Colville appeared for the hearing as noted on the sign in sheet which is on file at the Department of Public Safety.

Findings of Fact

1. Appellant’s properties are two-floor buildings located at 10 through 14 Central St., Ipswich, MA (“Properties”). There are six units on the Properties with two residential

units occupying the second floor of each building and a commercial space occupying the first floor of each building.

2. On March 10, 2010, the Town of Ipswich Assistant Inspector of Buildings sent an order to the Appellant citing a lack of emergency lights in the building common areas, the inadequacy of using a window as part of the secondary means of egress, and an unsafe fire escape. (Exhibit 1)
3. The current secondary means of egress from the second-floor residential units is a window that opens up to a metal platform. The means of egress continues down one metal step to another metal platform and finally down a near-vertical ladder elevated 12 feet from grade.
4. The secondary means of egress is located in a very constrained space making changes difficult. The structure of the current secondary means of egress nearly touches and even possibly crosses over onto the adjacent property.
5. The Inspector cited obstructions including an air conditioner in one window and a bed in front of another as unsafe. The Appellant states that these obstructions have since been removed.

Discussion

The Appellant seeks relief from the Building Inspector's finding that the secondary means of egress in the Appellant's Properties are unsafe and inadequate. 780 CMR 3400.4.1(2) provides that when a Building Official observes a violation of "the number of means of egress serving every space and/or story ... [or] any required means of egress component which is not of sufficient width to comply with 780 CMR 10.00 or is not so arranged as to provide safe and

adequate means of egress, including exit signage and emergency lighting” the Building Official is authorized to “order the abatement of the nonconformance.” There are several issues cited by the Building Official and the Board concurs in part with the Building Official but will allow for a conditional variance to others.

The first issue is straightforward. The inadequacy of emergency lighting in the hallways and stairwell of the Properties is unacceptable. 780 CMR 1006.1 provides that “[t]he means of egress, including the exit discharge, shall be illuminated at all times the building space served by the means of egress is occupied.” The Board agrees with the Building Inspector that lighting that conforms to 780 CMR 1006 must be provided in the stairwell and hallways. The Board accordingly denies the Appellant’s request for a variance to 780 CMR 3400.4.1(2) with regards to the provision of emergency lighting.

The second issue is whether a window may be a component of an adequate means of egress. The Board permits a conditional variance from the Building Official’s initial finding that a window is an inadequate egress component. 780 CMR 3400.4.2.2 provides that “existing fire escapes shall be continued to be accepted as a component in the means of egress in existing buildings.” It is important to note that 780 CMR 3400.4.2.4 restricts this permission by stating that “fire escapes...shall not constitute more than 50% of the required number of exits nor more than 50% of the required exit capacity.” As the windows in the Properties do not constitute more than 50% of the required number of exits or more than 50% of the required exit capacity, the Board will allow for the continued use of a window as a component of the means of egress provided that the height of the sill from the unit floor does not exceed 44 inches or a platform or step is provided to bring the height of the sill into conformance. The windows must also be completely unobstructed.

The third issue is whether the platform and ladder component of the fire escape is safe and adequate. The near-vertical ladder currently in use is an unacceptable component of this means of egress because they are unsafe and inadequate. The Appellant must use an alternate system such as a counterweight ladder or any other system deemed adequate based on the assessment of a structural engineer.

A motion to grant a conditional variance to 780 CMR 3400.4.1(2) was made. There was a second on the motion and a Board vote was taken which was unanimous.

Conclusion

The Appellant's request for a variance from 780 CMR 3400.4.1(2), as described in the Discussion is hereby **ALLOWED IN PART**. The Appellant must provide emergency lighting in the stairwells and hallways of the Properties, ensure that the window components of the secondary means of egress remain unobstructed and do not have sill heights in excess of 44 inches or provide a step or platform for any windows with sill heights that exceed 44 inches, and ensure that the ladder in the fire escapes is replaced with a safer alternative based on the assessment of a structural engineer.

SO ORDERED.

Douglas Semple

Jacob Nunnemacher



Alexander MacLeod

DATED: August 18, 2010

In accordance with M.G.L. c. 30, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days of receipt of notice of this decision.